

1 Michael R. Mushkin, Esq.
2 Nevada State Bar #2421
3 Michael R. Mushkin & Associates
4 4475 South Pecos Road
5 Las Vegas, Nevada 89121
6 Telephone: (702) 386-3999
7 Fax: (702) 454-3333
8 Michael@mushlaw.com
9 *Attorneys for Newcom Telephone Company, Inc.*

10 **UNITED STATES BANKRUPTCY COURT**

11 **DISTRICT OF NEVADA**

12 In re:
13
14 BUYERS ONLY REAL ESTATE AGENCY,
15 LLC

Case No. BK-S-12-23519-bam
Chapter 11

Debtor.

Date of Hearing:
Time of Hearing:

16 **NEWCOM TELEPHONE COMPANY, INC.'S**
17 **OBJECTION TO DEBTOR'S DISCLOSURE STATEMENT**

18 Newcom Telephone Company, Inc. (hereinafter "Newcom") hereby files its Objection
19 to Debtor Buyers Only Real Estate Agency, LLC's Disclosure Statement for Debtor's Plan of
20 Reorganization Dated September 26, 2013.

21 **POINTS AND AUTHORITIES**

22 **I. PRELIMINARY STATEMENT**

23 Debtor's Disclosure Statement for Debtor's Plan of Reorganization is inadequate in
24 several regards.¹ These inadequacies include:

- 25 • Debtor's dispute of the arbitration award issued in favor of Newcom. Debtor
26 disputes this claim despite the fact that Debtor has not appealed the arbitration

27 ¹ The Debtor states in the Disclosure Statement that the Disclosure Statement should be read in
28 conjunction with the proposed Plan of Reorganization. According, this Objection is based in
part of provisions in the proposed Plan of Reorganization. Newcom, however, reserves all
rights to make specific objections to the confirmation of the Plan of Reorganization at a later
time if and when a disclosure statement is approved by this Court.

award. The total amount to be awarded should further include interest and attorney's fees awarded to Newcom; however, the amount of \$434,917.69 is not in controversy. This Court should therefore respect the arbitration award amount of \$434,917.69 in favor of Newcom.

- The Class of Secured Claims and Priority has not been adequately established, fail to provide detailed information, and fail to notify the creditors of any recovery amount arising out of the arbitration award issued in favor of Newcom.
- Newcom is a secured creditor and is not listed as a secured creditor.
- The failure to notify creditors that the Debtor's owners have a personal interest.
- The failure to create a liquidating trust with a neutral trustee to review and possible pursue any claims against insiders and other third parties.
- The failure to provide sufficient information regarding Arbitration Award entered in favor of Newcom.

For the foregoing reasons, Debtor's Disclosure Statement lacks "adequate information" within the meaning of 11 U.S.C. § 1125(a). Consequently, the Court should not approve the Disclosure Statement.

II. BACKGROUND

On or about September 16, 2013, an Arbitration Award was entered in JAMS Case No. 1260001934, captioned *Buyers Only Real Estate Agency, LLC; Cliff Evarts, Susan Evarts, Las Vegas Wedding Bureau vs. Newcom Telephone Company, Inc.* Pursuant to the Arbitration Award, the Arbitrator found in "favor of Newcom Telephone Company and awarded Newcom Telephone Company \$434,917.69 under its counterclaim" and found "that the Buyers Only Real Estate claims have been dismissed." The Arbitration Award further provided that "The parties shall have ten days from the service of this Arbitration Award by the Arbitrator to submit Motions for fees and costs. If Motions for fees and costs are not submitted by that date, then this award shall become final." The Arbitration Award was the served by facsimile and

1 email on September 16, 2013. Ten days has passed since service of the Arbitration Award.
2 Debtor has also not appealed the Arbitration Award.

3 **III. OBJECTION TO THE DISCLOSURE STATEMENT**

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5 11 U.S.C. § 1125(b) provides, in pertinent part: “An acceptance or rejection of a plan
6 may not be solicited after the commencement of the case under this title from a holder of a
7 claim or interest with respect to such claim or interest, unless, at the time of or before such
8 solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written
9 disclosure statement approved, after notice and a hearing, by the court as containing adequate
10 information.” 11 U.S.C. § 1125(a)(1) defines “adequate information” as follows:
11

12 information of a kind, and in sufficient detail, as far as is reasonably practicable in
13 light of the nature and history of the debtor and the condition of the debtor’s
14 books and records, including a discussion of the potential material Federal tax
15 consequences of the plan to the debtor, any successor to the debtor, and a
16 hypothetical investor typical of the holders of claims or interests in the case, that
17 would enable such a hypothetical investor of the relevant class to make an
18 informed judgment about the plan, but adequate information need not include
19 such information about any other possible or proposed plan and in determining
20 whether a disclosure statement provides adequate information, the court shall
21 consider the complexity of the case, the benefit of additional information to
22 creditors and other parties in interest, and the cost of providing additional
23 information.

24 Pursuant to 11 U.S.C. § 1125(a)(1), a disclosure statement may not be approved unless
25 and until it contains information sufficient in detail to permit Debtor’s creditors to “make an
26 intelligent and informed decision as to whether to accept or reject the plan.” In re Copy
27 Crafters Quickprint, Inc., 92 B.R. 973, 980 (Bank. N.D.N.Y. 1988); In re Ferretti, 128 B.R. 16,
28 19 (Bankr. D. N.H. 1991) (“[A] proper disclosure statement must clearly and succinctly inform
the average unsecured creditor what it is going to get, when it is going to get it, and what
contingencies there are to getting its distribution.”). A disclosure statement should also
provide creditors with meaningful information regarding “the consequences of the proposed

1 plan on their claims and the possible Code alternatives so that they can intelligently accept or
2 reject the Plan.” In re Copy Crafters Quickprint, Inc., 92 B.R. at 981; see also Duff v. United
3 States Trustee (In re California Fidelity, Inc.), 198 B.R. 567, 571 (9th Cir. BAP 1996) (stating
4 that the purpose of the disclosure statement is to give all creditors a source of information
5 which allows them to make an informed choice regarding the approval or rejection of a plan.).
6 Although the type and amount of information required to be contained in a disclosure
7 statement varies from case to case, Section 1125 of the Bankruptcy Code requires more
8 disclosures than less. See: Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d
9 355, 366 (3d Cir. 1996) (“Because creditors and the bankruptcy court rely heavily on the
10 debtor’s disclosure statement in determining whether to approve a proposed reorganization
11 plan, the importance of full and honest disclosure cannot be overstated.); Oneida Motor Freight,
12 Inc. v. United Jersey Bank, 848 F.2d 414, 417 (3rd Cir. 1988) (stating that the fact that creditors
13 and courts heavily rely on disclosure statements increases a debtor’s obligation to provide
14 necessary, adequate information upon which such parties can make informed decisions
15 regarding proposed plan.). It is not only the quantity, but also the quality, of the disclosed
16 information that matters. Frequently, courts have found that a disclosure statement that does
17 not provide sufficient factual support for its position cannot be approved. See: In re Egan, 33
18 B.R. 672, 675-76 (Bankr. N.D. Ill. 1983) (nothing that a disclosure statement is “intended to be
19 a source of factual information upon which one can make an informed judgment about a
20 reorganization plan.”).

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25 In this case, Debtor’s Disclosure Statement fails to provide adequate information
26 concerning matters that are important to the Debtor’s creditors in their evaluation of whether to
27 vote for or against the proposed Plan of Reorganization. First, the Disclosure Statement fails to
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1 disclose sufficient information regarding Arbitration Award entered in favor of Newcom and
2 that the Debtor has not timely appealed the Arbitration Award. Therefore, there should be no
3 dispute by Debtor that the Arbitrator found in “favor of Newcom Telephone Company and
4 awarded Newcom Telephone Company \$434,917.69 under its counterclaim” and found “that
5 the Buyers Only Real Estate claims have been dismissed.” There is nothing whatsoever in the
6 Disclosure Statement justifying the dispute or notifying the creditors that they will not receive
7 any benefit whatsoever. Debtor has also not disclosed Newcom as a secured creditor or that
8 Newcom is entitled to the total amount awarded pursuant to the Arbitration Award. The
9 Disclosure Statement further lacks adequate information because it fails to disclose that the
10 Debtor’s owners have a personal interest in the Arbitration Award. The Disclosure Statement
11 further fails to disclose that the Las Vegas Wedding Bureau, LLC is also a named party to the
12 arbitration though Debtor does reveal there is a risk that the Las Vegas Wedding Bureau, LLC
13 may default under its lease with the Debtor and that members of the Debtor will fail to fund the
14 New Value Contribution. This information is material and should be disclosed so that the
15 creditors have the ability to make an intelligent decision as to whether to vote for or against the
16 plan. Second, the Disclosure Statement has failed to address the issue of priority. The Court
17 by prior ruling has withheld action on the issue of priority.

18
19 In light of the fact that the Debtor has failed to timely appeal the Arbitration Award and
20 properly pursue an appeal, the creditors should be made aware that such an untimely appeal
21 would be useless and that such an adversary proceeding in light of the Arbitration Award is
22 also useless. The creditors should also be made aware of an option that a Chapter 7 liquidation
23 is also likely if the Debtor continues to waste resources if the Debtor continues to dispute the
24 Arbitration Award and if the Las Vegas Wedding Bureau, LLC defaults.

1 As a holder of a large claim in the estate, it is important to Newcom, as it should be to
2 all creditors, that the Debtor pursue recoveries for all of its assets, including claims against
3 insiders or other third parties. However, there is no provision in the Disclosure Statement or
4 the proposed Plan of Reorganization that contemplates or addresses claims against insiders.
5 Due to the inherent self-interestedness of the insiders to not pursue claims against themselves,
6 it would be in the best interest of the creditors and the estate for this Court to appoint a
7 liquidating trustee to pursue all causes of action that the Debtor may have against any insiders.
8 An individual that does not have a personal financial stake in a claim, such as a neutral
9 liquidating trustee, should be the one deciding whether to use the estate's funds and limited
10 resources to pursue the Debtor's alleged causes of action.
11

12 Newcom objects to the Disclosure Statement and the proposed Plan of Reorganization
13 to the extent Debtor intends to use any of Newcom's cash collateral and/or assets to finance its
14 plan. Newcom has a security interest in any cash that the Debtor has as shown by the
15 Arbitration Award. The Debtor has not received permission from Newcom or this Court to use
16 the cash collateral.
17

18 **IV. CONCLUSION**

19 As explained herein, the Debtor's Disclosure Statement lacks adequate information
20 regarding a number of issues that are critical to a creditor's ability to make an intelligent and
21 informed evaluation of the proposed Plan of Reorganization. The Disclosure Statement must
22 therefore not be approved.
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24 **IV. PRAYER**

25 WHEREFORE, Newcom Telephone Company, Inc. respectfully requests that this Court
26 (a) deny approval of Debtor Buyers Only Real Estate Agency, LLC's Disclosure Statement for
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28

1 Debtor's Plan of Reorganization Dated September 26, 2013 and/or any amendments thereto
2 until such time as the issues above have been resolved and (b) grant Newcom Telephone
3 Company, Inc. such other relief that it deems just and proper under the circumstances.
4

5 Dated: December 13, 2013.

6 Michael R. Mushkin & Associates

7
8 By: 

9 MICHAEL R. MUSHKIN, ESQ.
10 Nevada State Bar #2421
11 4475 South Pecos Road
12 Las Vegas, Nevada 89121
13 Telephone: (702) 386-3999
14 Fax: (702) 454-3333
15 Michael@mushlaw.com
16 *Attorneys for*
17 *Newcom Telephone Company, Inc.*
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CERTIFICATION OF SERVICE

I hereby certify that on the 13th day of December, 2013, I electronically filed the forgoing with the Clerk of Court using the court's transmission facilities (CM/ECF) system to make service, which will cause the forgoing document to be served by electronic means to those registered as an electronic case filing user with the Clerk of Court as shown in the Court's Notice of Electronic Filing at the time of electronic filing.

The following are those who are currently on the list and/or were on the list to receive e-mail notices for this case as of December 13, 2013.

Mailing Information for Case 12-23519-mkn

Electronic Mail Notice List

The following is the list of parties who are currently on the list to receive email notice/service for this case.

- TIMOTHY S. CORY tcory@djplaw.com, csimmons@djplaw.com;salexander@djplaw.com
- MICHAEL R MUSHKIN michael@mushlaw.com, darrell@mushlaw.com;shirley@mushlaw.com;steven@mushlaw.com;karen@mushlaw.com;marco@mushlaw.com;receptionist@mushlaw.com
- MARNI RUBIN-WATKINS marni.watkins@fnf.com, mia.hurtado@fnf.com
- U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov

Manual Notice List

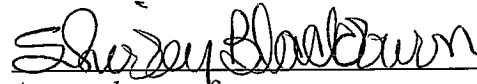
The following is the list of parties who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

READE & ASSOCIATES
1333 N. BUFFALO DR., #210
LAS VEGAS, NV 89128

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See also the Label Matrix for local noticing attached hereto as Exhibit A.

A handwritten signature in cursive script, appearing to read "Shirley Blackburn", is written over a horizontal line.

An employee of
Michael R. Mushkin & Associates

Label Matrix for local noticing
0978-2
Case 12-23519-mkn
District of Nevada
Las Vegas
Fri Dec 13 16:26:33 PST 2013
NEWCOM TELEPHONE COMPANY, INC.
3433 RINGSTAR RD, STE 1
N. LAS VEGAS, NV 89030-4475

BUYERS ONLY REAL ESTATE AGENCY, LLC
555 SOUTH 3RD STREET
LAS VEGAS, NV 89101-6501

READE & ASSOCIATES
1333 N. BUFFALO DR., #210
LAS VEGAS, NV 89128-3636

NEVADA STATE BANK
C/O MCDONALD CARANO WILSON LLP
2300 W. SAHARA AVE., SUITE 1200
LAS VEGAS, NV 89102-4395

U.S. TRUSTEE - LV - 11 11
300 LAS VEGAS BOULEVARD S.
SUITE 4300
LAS VEGAS, NV 89101-5803

United States Bankruptcy Court
300 Las Vegas Blvd., South
Las Vegas, NV 89101-5833

Clark County Assessor
c/o Bankruptcy Clerk
500 S. Grand Central Pkwy
Box 551401
Las Vegas, NV 89155-4502

Clark County Treasurer
PO Box 551220
Las Vegas, NV 89155-1220

Clark County Treasurer
c/o Bankruptcy Clerk
500 S. Grand Central Pkwy
Box 551220
Las Vegas, NV 89155-4502

Clifford P and Susanne R Evarts
2360 Villandry Court
Henderson, NV 89074-5331

Commercial Consultants
10150 E. Cochise Drive, Suite 100
Scottsdale, AZ 85258-4800

Dept. of Employment, Training & Rehab
Employment Security Division
500 East Third Street
Carson City, NV 89713-0002

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

JAMS
PO Box 512850
Los Angeles, CA 90051-0850

Las Vegas Wedding Bureau, LLC
555 South 3rd Street
Las Vegas, NV 89101-6501

NEVADA STATE BANK
Attn: Brian Solomon
400 N. Green Valley Parkway. 2nd Floor
Henderson, Nevada 89074-7706

Nevada Department of Taxation
Bankruptcy Section
555 E. Washington Ave. #1300
Las Vegas, NV 89101-1046

Nevada State Bank
PO Box 990, Mail Code 3800
Las Vegas, NV 89125-0990

Nevada State Development
Acct No xxxxxx4008
Corporation
6572 S. McCarran Blvd.
Reno, NV 89509-6112

Newcom Telephone Co Inc.
3433 Ringstar Road
North Las Vegas, NV 89030-4474

Reade & Associates
1333 North Buffalo Dr
Las Vegas, NV 89128-3636

United States Trustee
300 Las Vegas Blvd. South #4300
Las Vegas, NV 89101-5803

TIMOTHY S. CORY
DURHAM JONES & PINEGAR
10785 W. TWAIN AVE., STE 200
LAS VEGAS, NV 89135-3028

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) DURHAM JONES & PINEGAR

(d) NEVADA STATE BANK
C/O MCDONALD CARANO WILSON LLP
2300 W. SAHARA AVE., SUITE 1200
LAS VEGAS, NV 89102-4395

End of Label Matrix
Mailable recipients 23
Bypassed recipients 2
Total 25

EXHIBIT "A"